NATIONAL LABOR RELATIONS BOARD REGION 2	
In the Matter of:	
NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES & TECHNICIANS – COMMUNICATION WORKERS OF AMERICA, AFL-CIO,	
Petitioner,	
- and -	Case No. 2-UC-625, et al
NBC UNIVERSAL, INC.,	
Employer.	

PETITIONER LOCAL 11, NABET-CWA'S STATEMENT IN OPPOSITION TO NBC UNIVERSAL'S REQUEST FOR REVIEW

Petitioner Local 11, National Association of Broadcast Employees & Technicians – Communication Workers of America ("Local 11"), by its attorneys Meyer, Suozzi, English & Klein, P.C., respectfully submits this statement opposition to NBC Universal's request for review, and in support of the NABET petitions for unit clarification in the above-captioned case.

Preliminary Statement

The petitions seek to include in the bargaining unit of Local 11's parent union, National Association of Broadcast Employees & Technicians – Communication Workers of America ("NABET"), the newly created position of "Content Producer" ("CP") at NBC Universal ("NBC" or "Employer"). Also parties to this proceeding are NABET and several other NABET local unions (Local 31 in Washington, D.C., Local 41 in Chicago, IL, and Local 53 in Los Angeles, CA), all seeking inclusion of this position

in NABET's bargaining unit.¹ Local 11 represents, among others, NBC's employees working as cameramen, editors, and writers at WNBC, NBC's local television station in New York. In that the primary functions of a CP is the performance of bargaining unit work, CPs should be included in NABET's bargaining unit.

On October 26, 2011, the Acting Regional Director ("ARD") issued a decision in the above-captioned proceeding which granted the petitions of NABET, Local 41, Local 11, and Local 53. The ARD denied the petitions of Local 31 and AFTRA, and instead found a question concerning representation and that resolution through a Board election was appropriate for CPs at that location (ARD at 83)². On December 15, 2011, NBC filed a Request for Review of the ARD's decision as it pertains to NABET and Locals 11, 31 and 41. Statements in opposition to NBC's Request for Review have already been submitted by NABET and Local 41, and Local 31. Local 11 hereby adopts the arguments set forth in those statements in opposition, and rather than make cumulative arguments, Local 11 will take this opportunity to highlight certain points that further support the denial of NBC's request for review.

Argument

Point 1: An accurate description of the work performed by CPs does not support NBC's position, so NBC abandons any effort to specify the work performed by CPs in its request for review. NBC undertook considerable effort during the hearing to define the role of a CP as a "producer", explaining that as a "producer" CPs would be responsible for a news story from "soup to nuts" (ie. think of a story, pitch it, research it, write it, shoot it, and edit it, and bear the editorial responsibility for the story). (ARD at 27, 71, 75). NBC undertook this effort to try to establish the "soup to nuts" aspect of the CP's work as a means to justify their unilateral exclusion of CPs from the bargaining unit

¹ A petition by the American Federation of Television and Radio Artists ("AFTRA") seeking to represent CPs employed in Washington, D.C., has also been consolidated with this proceeding.

² Citations to the ADR's decision will be cited as "ADR at ____." Citations to the hearing transcript will be cited as "Tr. at ___." Citations to NBC's request for review will be cited as "NBC RR at ___."

(ARD at 71, 74-75). As detailed in the ARD's decision, the record did not bear out NBC's attempt to define the work of CPs. Rather, the ARD correctly found that CPs primarily perform bargaining unit work. (ARD at 30-31, 40-42, 70-72, 75). Further, the ARD correctly found that members of the bargaining unit historically performed all aspects of the work now assigned to CPs. (ARD at 26, 31-32, 42, 70, 72-73, 75). NBC does not take on the merits of the ARD's decision in this regard, but instead repeats that CPs are "producers" without explaining what they actually do, and repeats that a CPs basic and core functions are different from that of the bargaining unit without identifying or explaining the overwhelming record evidence to the contrary.³ Notably, the ARD's findings that CPs spend the overwhelming majority of their time doing bargaining unit work, and that the "producing" work performed by CPs is the same as such work performed by the bargaining unit, is not challenged by NBC. Where employees in a newly created classifications perform the same basic functions historically performed by the bargaining unit, the Board will presume that the new classification is already part of the bargaining unit. Premcor, 333 NLRB 1365 (2001). In that the ARD found that CPs perform the same basic functions historically performed by the bargaining unit, the ARD correctly concluded that the NABET bargaining unit should be clarified to include CPs.

Point 2: NBC's attempt to distinguish CPs as employees charged with creative and editorial control from the bargaining unit's description as technical employees is without merit. First, the ARD correctly found that CPs rarely, if ever, exercise creative control or, put another way, "own" the stories to which they are assigned (ARD at 71, 75). Second, the creative/technical dichotomy is a fallacy. Local 11's members regularly participate in the "creative process" as part of their everyday job

³ NBC repeatedly refers to CPs as "producers" and describes their work as "producing", but does not attempt to explain what those terms mean (NBC RR at 1, 2, 3, 27-28, 29, 30, and 32). NBC's merely claims that a producer takes editorial responsibility for a story (NBC RR at 28), however such a claim does not describe a CP's actual work, nor does it respond to the ARD's findings that CPs rarely, if ever, have such editorial responsibility (ARD at 71, 74-75). Similarly, NBC's claims that CP work was "more than merely the same job" (NBC RR at 8) or had "many new and different tasks and functions" (NBC RR at 29), do not describe a CP's work or substantively challenge the ARD's findings.

duties. There is significant creativity and artistry involved in shooting, editing, and writing stories. (Tr. 1082, 1196, 1298-1300, 1324, 1367, 1458-59). In addition, Local 11's members regularly collaborate with the producers, reporters, and other non-bargaining unit members to shape the stories they work on. (Tr. 1268-69, 1276, 1280, 1283, 1298-1300, 1357, 1440-42, 1438, 1444, 1447, 1455-57, 1459).

Point 3: NBC takes issue with the ARD's finding that Local 11's agreement with WNBC regarding the CPs was in excess of the Local President's authority, and was not binding on NABET. The statement submitted by NABET and Local 41 addresses the justification of the ARD's decision. It is important to add that the ARD's conclusion is correct for another reason. Even if the ARD found that the Local 11 agreement on CPs was valid, based upon the manner in which CPs have been employed by NBC, the agreement would not prohibit adding CPs to the unit. NBC contends that the job classification of Content Producer was created to be a producer, responsible for all aspects of a story they devise, from its inception to researching, sourcing, investigating, up through to the final product. Further, NBC admits that it is this role that CPs were to fill when NBC approached Local 11, described their intended function, and negotiated the September 2008 agreement (Tr. 1146). In that NBC has employed the CP in a manner that is wholly inconsistent with the work covered by the CP agreement, it does not prohibit NABET from including within the bargaining unit employees that are performing bargaining unit work.

Point 4: NBC seeks the diminish the credibility of Local 11's witnesses that were currently working as CPs, including Keith Feldman, by describing them as "strong Union supporters who resisted the Company's move to the Content Producer model" (NBC RR at 29). NBC's position in its request for review is without merit, and is at odds with the testimony of its witnesses at the hearing, who identified Mr. Feldman as a "standout example[]" and a "very good example" of the Content Producer job and

one of their "success stories" (Tr. 455-56, 479). Notably, Mr. Feldman testified that 80% of his work was devoted to bargaining unit work (Tr. 1339).

Conclusion

For the foregoing reasons, as well as those set forth in Local 11's post-hearing brief, the statements submitted by NABET, Local 41, and Local 31 in opposition to NBC's request for review, and the ARD's decision, NBC's request for review should be denied. Local 11 joins NABET and the other locals in respectfully requesting that the unit clarification petitions be granted, and that the NABET unit be clarified to include Content Producers.

Dated: December 29, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of December 2011, a copy of the foregoing Petitioner Local 11, NABET CWA's Statement in Opposition to NBC Universal's Request for Review, was served by e-mail on the following:

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